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UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

ISABEL NUNEZ, }
Plaintiff, }
vs. }
REHABCARE GROUP EAST, INC., ROE }
CORPORATIONS I through X, inclusive; }
and DOES I through X, inclusive, }
Defendants. }

**PLAINTIFF'S COMPLAINT
(Jury Demanded)**

COMES NOW PLAINTIFF, Isabel Nunez, and complains of Defendant, RehabCare Group East, Inc. (hereinafter "Defendant" or "RehabCare"), as follows:

JURISDICTION AND VENUE

1. This is a civil action for damages and injunctive relief to redress the deprivation of rights secured to Plaintiff, Isabel Nunez. This action comes under federal statutes prohibiting discrimination and retaliation, and to secure the protection of and to redress deprivation of rights under these laws and related tort claims.

2. Plaintiff ("Nunez" or "Plaintiff") has statutory claims arising under the Americans with Disabilities Act ("ADA"), as amended.

3. Ms. Nunez, the Plaintiff, asserts she was harassed, treated differently, subjected to a hostile work environment, and retaliated against in her employment because of her disability.

4. Ms. Nunez filed her Charge of Discrimination with the U.S. Equal Employment Opportunity Commission (EEOC) and signed her Charge of Discrimination on December 24, 2014, a copy of which is attached hereto as Exhibit "A" and incorporated herein by reference. Ms. Nunez

1 received a copy of the “Right to Sue” notice (dated April 11, 2016) based upon the charge, and therefore
2 fulfilled all jurisdictional requirements for the filing of this suit. She has filed her lawsuit within 90 days
3 of her receipt of the Right to Sue notice which was April 14, 2016.

4 5. Venue is proper in the District of Nevada pursuant to 28 U.S.C. § 1331(b) because the
5 claimed unlawful employment practices were committed in and arose in the District of Nevada.

THE PARTIES

7 6. Plaintiff, Ms. Nunez, at all times relevant to this Complaint, is a resident of Clark County,
8 Nevada and at all times herein was employed by the Defendant, RehabCare, from January 2011 through
9 July 2015.

10 7. As an employer in Nevada with over 500 employees, RehabCare is required to comply
11 with all state and federal statutes which prohibit harassment, discrimination and retaliation because of
12 disability.

13 8. DOE Defendants I through X, inclusive, and ROE CORPORATIONS, I through X,
14 inclusive, are persons, corporations or business entities who are or which may also be responsible for
15 or who directed or assisted in the wrongful actions of the named Defendants, or who may be individual
16 officers or employees of the named Defendants. The true identities of the DOE Defendants and ROE
17 CORPORATIONS are unknown to Plaintiff at this time. Plaintiff therefore alleges that DOES I-X,
18 inclusive, and ROE CORPORATIONS I-X, inclusive, may be responsible in part for the damages or
19 injuries suffered by Plaintiff as a result of their own wrongful actions and/or those of their agents and/or
20 employees. Plaintiff will seek leave to amend this Complaint as soon as the true identities of DOE and
21 ROE Defendants I-X, inclusive, are revealed to Plaintiff.

FACTS

23 9. Ms. Nunez, began her employment with RehabCare in or about January 2011. She was
24 a Speech Language Pathologist.

25 10. From the beginning of her employment, Ms. Nunez informed/disclosed her medical
26 condition and that she would need a reasonable accommodation. She was able to work 4 days per week
27 (32 hours/week). RehabCare provided her that accommodation.

28 11. In September 2014, Defendant RehabCare required Plaintiff Nunez to work 5 days/week.

1 If she failed to do so, her job would be advertised. Ms. Nunez needed her job, including its health
2 insurance benefits, and advised her manager that she would return to work. However, she also advised
3 the Corporate HR department about this change in her schedule.

4 12. Upon her return to work in October 2014, Plaintiff Nunez was given paperwork for her
5 physician to complete to request an accommodation. Her manager had told her that 4 days/week was not
6 an option because the caseload had increased. Plaintiff Nunez also became concerned about her job
7 being given to someone else while she was on FMLA.

8 13. Thereafter, Plaintiff Nunez was subjected to mean-spirited comments from co-workers.
9 Even parmesan cheese had been placed in her coat pocket making a disgusting mess. The harassment
10 escalated to such an extent that derogatory texts about her were sent to her (in error). She understand
11 then that her health matter had not even been kept confidential.

12 14. Ms. Nunez was more strictly scrutinized in her hours/timesheets. She always explained
13 and was able to show that there was no wrongdoing. Other employees were not treated in this manner.

14 15. Ms. Nunez was also subjected to scrutiny concerning her sick days. Again, she reviewed
15 the policy, noted the change, and felt that she was singled out for such scrutiny in light of her complaints
16 about the disability and her request for an accommodation which was simply to remain at a 4 days/week
17 schedule.

18 16. Ms. Nunez was further advised that the department could not be run around her doctors'
19 appointments. On her previous 4 days/week schedule she had no problems scheduling doctors'
20 appointments so as to avoid taking off work. With a 5 days/week schedule she was no longer able to
21 do so.

22 17. On November 12, 2014, Ms. Nunez filed her charge of discrimination with the EEOC
23 and signed the charge on December 24, 2014 stating both disability discrimination and retaliation.

24 18. Other instances include the added task that she had to inform her manager in person if
25 she was going to leave the building. Previously this had never been the required policy in the
26 department.

27 19. When Ms. Nunez applied for leave in January 2015 it was not allowed because she did
28 not have sufficient PTO. Ms. Nunez had previously taken unpaid leave so that enough PTO would

1 accrue. Now, suddenly, it was not allowed. However, it seemed that this policy only applied to Ms.
2 Nunez.

3 20. Ms. Nunez was also harassed about the completion of her accommodation forms. Then
4 she was advised to complete the FMLA forms.

5 **FIRST CAUSE OF ACTION**

6 ***Disability Discrimination Under Federal Anti-Discrimination Statute***

7 21. Plaintiff, Ms. Nunez, repleads and realleges and incorporates herein by reference each
8 and every allegation contained in paragraphs 1 through 20 above as if fully set forth.

9 22. Defendant RehabCare was aware of the conduct of its management employees
10 and/or employees in engaging in harassing or discriminatory conduct toward Ms. Nunez.

11 23. Defendant RehabCare, as employer, knew or should have known of its long-standing
12 obligation to maintain a workplace free of harassment and discrimination based on disability.

13 24. Defendant RehabCare failed to take reasonably adequate steps to prevent disability
14 discrimination and harassment in its workplace.

15 25. Defendant RehabCare failed to institute effective institutional policies to remedy
16 complaints about conduct which might constitute discrimination based on disability, including
17 harassment.

18 **SECOND CAUSE OF ACTION**

19 ***Retaliation***

20 26. Plaintiff Nunez repleads and realleges and incorporates herein by reference each and
21 every allegation contained in Paragraphs 1 through 25 above as if fully set forth.

22 27. Defendant RehabCare knew or should have known of its obligation to refrain from
23 and prevent retaliatory acts against Plaintiff Ms. Nunez and RehabCare failed to do so.

24 28. Defendant RehabCare subjected Ms. Nunez to adverse terms and conditions of
25 employment after she reported her claims of disability discrimination and retaliation, all of which
26 constitute unlawful retaliation.

27 29. Defendant RehabCare retaliated against Ms. Nunez by not providing her reasonable
28 accommodation for her disability creating a hostile work environment that resulted from its

retaliatory actions against her.

30. In addition, Defendant RehabCare failed to take immediate corrective action when it learned that Ms Nunez had suffered acts of retaliation by employees of Defendant RehabCare.

31. Ms. Nunez has also suffered serious mental distress as a result of this unlawful discrimination.

32. Ms. Nunez is entitled to be fully compensated for all damages she has sustained.

33. It has been necessary for Ms. Nunez to retain the services of an attorney and she should be compensated therefor.

THIRD CAUSE OF ACTION

Negligent Infliction of Emotional Distress

11 34. Plaintiff, Ms. Nunez, repleads and realleges and incorporates herein by reference each
12 and every allegation contained in paragraphs 1 through 33 above as if fully set forth.

13 35. Defendant RehabCare owed a duty to exercise due care not to subject Ms. Nunez
14 to foreseeable risk of mental, emotional, and/or physical injury, and Defendant RehabCare knew or
15 reasonably should have known that such acts and/or omissions of Defendant RehabCare as herein
16 alleged, were likely to result in mental, emotional and/or physical injury to Ms. Nunez.

17 36. Defendant RehabCare, while engaging in the aforementioned conduct, did
18 negligently inflict extreme mental and emotional distress, indignity, embarrassment, and humiliation
19 upon Ms. Nunez.

20 37. As a direct and proximate result of the Defendant RehabCare's negligent
21 infliction of such emotional distress, Ms. Nunez has suffered damages and she is entitled to recover
22 compensatory damages and other damages related thereto.

23 38. It has been necessary for Ms. Nunez to retain the services of an attorney and she
24 should be compensated therefor.

WHEREFORE, Plaintiff Isabel Nunez prays for the following relief:

3. All compensatory, special and general damages allowed by law;
4. Attorneys' fees and costs of suit incurred herein;
5. Prejudgment interest;
6. Punitive damages in an amount sufficient to punish and deter Defendant from engaging in any such conduct in the future and as an example to other employers not to engage in such conduct; and
7. For such other and further relief as the Court shall deem just and proper.

Respectfully submitted this 12th day of July, 2016.

By: Kristina S. Holman
KRISTINA S. HOLMAN #374
703 S. Eighth Street
Las Vegas, Nevada 89101
Attorney for Plaintiff,
Isabel Nunez

EEOC Form 5 (11/09)

| | | | |
|---|--|---|--|
| CHARGE OF DISCRIMINATION | | Charge Presented To: Agency(ies) Charge No(s) | |
| This form is affected by the Privacy Act of 1974. See enclosed Privacy Act Statement and other information before completing this form. | | <input type="checkbox"/> FEPA | <input checked="" type="checkbox"/> EEOC |
| Nevada Equal Rights Commission | | 487-2015-00247 | |
| State or local Agency, if any | | and EEOC | |
| Name (indicate Mr., Ms., Mrs.) Ms. Isabel Nunez | | Home Phone (Incl. Area Code) (702) | |
| Street Address Las Vegas, NV 89 | | Date of Birth 00/00/00 | |
| City, State and ZIP Code | | | |
| Named is the Employer, Labor Organization, Employment Agency, Apprenticeship Committee, or State or Local Government Agency That I Believe Discriminated Against Me or Others. (If more than two, list under PARTICULARS below.) | | | |
| Name KINDRED HEALTHCARE | | No. Employees, Members 500 or More | Phone No. (Include Area Code) (702) 784-4300 |
| Street Address 2250 E. Flamingo Road, Las Vegas, NV 89119 | | City, State and ZIP Code | |
| Street Address | | City, State and ZIP Code | |
| DISCRIMINATION BASED ON (Check appropriate box(es).) | | | |
| <input type="checkbox"/> RACE | <input type="checkbox"/> COLOR | <input type="checkbox"/> SEX | <input type="checkbox"/> RELIGION |
| <input type="checkbox"/> RETALIATION | <input type="checkbox"/> AGE | <input checked="" type="checkbox"/> DISABILITY | <input type="checkbox"/> NATIONAL ORIGIN |
| <input type="checkbox"/> OTHER (Specify) | <input type="checkbox"/> GENETIC INFORMATION | | |
| DATE(S) DISCRIMINATION TOOK PLACE | | Earliest 11-03-2014 | |
| Latest | | | |
| <input checked="" type="checkbox"/> CONTINUING ACTION | | | |
| THE PARTICULARS ARE (If additional paper is needed, attach extra sheet(s)): | | | |
| In or around January 2011, I was hired by the Respondent as a Speech Language Pathologist. My last job title was Speech Language Pathologist. | | | |
| In or around September 2014, I informed Respondent regarding my medical condition and need for a reasonable accommodation. There is an accommodation that would allow me to perform the essential functions of the job. Respondent failed to engage in the interactive process. | | | |
| On or about November 19, 2014, I was issued written discipline due to my disability. | | | |
| I believe I was discriminated against because of my disability, and in retaliation for engaging in protected activity, in violation of the Americans with Disabilities Act of 1990, as amended. | | | |
| I want this charge filed with both the EEOC and the State or local Agency, if any. I want this charge filed with the State or local Agency, if any. | | NOTARY – When necessary for State and Local Agency Requirements | |

| | |
|--|--|
| <p>I want this charge filed with both the EEOC and the State or local Agency, if any. I will advise the agencies if I change my address or phone number and I will cooperate fully with them in the processing of my charge in accordance with their procedures.</p> | <p>NOTARY – When necessary for State and Local Agency Requirements</p> |
| <p>I declare under penalty of perjury that the above is true and correct.</p> | <p>I swear or affirm that I have read the above charge and that it is true to the best of my knowledge, information and belief.</p> |
| <p>Dec 24, 2014</p> | <p>SIGNATURE OF COMPLAINANT</p> <p><i>A. L. S.</i></p> <p>RECEIVED</p> <p>SUBSCRIBED AND SWORN TO BEFORE ME THIS DATE (month, day, year)</p> <p>DEC 24 2014</p> <p>EEOC/LVLO</p> |

Exhibit "A"